

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.478 OF 2002

Shri Amarlal B. Bachani .. Appellant.

V/s.

The Assessing Officer, 26(2),
Earnest House, Nariman Point,
Mumbai .. Respondent.

Mr.P.R. Toprani for the appellant.

Mr.R.V. Desai, Senior counsel with Ms.S.V. Bharucha
& Vijay Kantharia i/b. P. Kapur for the respondent.

**CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.**

DATED : 3RD SEPTEMBER, 2004.

P.C. :

Heard.

2. It is not in dispute before us that save and except that Shri Ramchand and Shri Brijlal were occupants in Hari Niwas, there is nothing on record to indicate that they have any right, title or interest in Hari Niwas. The tribunal considered the matter thus :

"11. We have carefully considered the rival submissions. We have carefully gone through the Memorandum of Understanding and Award. After careful consideration we arrive at a conclusion that the claim of assessee in respect of payment of Rs.1.70 crs. has no legs to stand. Under no circumstances it can be said that the sum was paid by the assessee to Shri Brij Lal Bachani and Shri Ram Chand Bachani in

consideration to get vacant possession of the property in question. The reasons for this conclusion are as follows :

(1) Firstly, the assessee was having 20% share in undeveloped property (Hari Niwas) by the Title Deed. As per Award, the assessee became entitled to own one flat out of 12 flats alongwith common enjoyment of additional commercial space. In this way, the share of the assessee in the redeveloped property diminished instead of increasing. So, it cannot be said to be a case of betterment of title. The ratio of decision of Hon'ble Supreme Court in the case of T.N. Aravinda Reddy (supra) relied upon by learned counsel of the assessee is not applicable as in the said case assessee had made the payment to the other coparceners to make his title perfect. In the present case, the title of the assessee has not improved by making the payment of Rs.1.70 Crores.

(2) Secondly, if this was a payment made for vacating the property by Shri Brijlal Bachani and Shri Ramchand Bachani (alleged tenants) why the assessee, his mother and brother only were put to an obligation for making entire payment of Rs.4.25 crores to the alleged tenants. Why the other owners of Hari Niwas i.e. close relations of alleged tenants were not made liable for making any payment to the alleged tenants, they were to receive construction cost of flats allotted to them from alleged tenants. In other words, Shri Hariram and Smt.Rani Bachani, who were owners of 50% share in undeveloped property had to pay nothing as compared to sum payable by assessee, his brother and mother, who were also owner of 50% share in hari Niwas and paid a huge sum of Rs.4.25 crores. The text of Memorandum of Understanding and Award do not suggest that the assessee's group (i.e. assessee, his brother and mother) stood on a different footing as compared to the other group of Hari Chand. Thus, there was no need for the assessee's group to bear the total expenditure or get vacant possession of the whole property,

even otherwise it has not been proved that they were legal tenants. On the other hand, the facts of the case indicates that they were only residing in Hari Niwas being the close relative of the co-owners having 50% share. No rent was received from them. This by itself demolish the stand of the assessee that they were tenants.

(3) Thirdly, the brother of the assessee Shri Kishan Chand, who had 10% share in the undeveloped property (Hari Niwas) made entitled to have two flats in the re-developed property. Allotment of two flats to him made his title better in the re-developed property as the same was increased from 1/10th to 1/6th though the payment made by him to the alleged tenants was in accordance with his share in undeveloped property. The payment of Rs.3,85,000/- each made by him to his mother and his brother for allotment of extra flat is an insignificant sum and effected only to the inter-se ownership group of the assessee.

(4) Fourthly, the alleged tenants were also given equal amounts instead of the fact that even according to the Memorandum of Understanding they were not occupying equal space in Hari Niwas. According to the Memorandum of Understanding Shri Ram Chand Bachani was having 1000 sq. ft. whereas Shri Brij Lal Bachani was having 1400 sq. ft."

3. The aforesaid consideration by the tribunal cannot be said to suffer from any error of law.

4. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)